



**JOHN CHIANG**  
California State Controller



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New York City  
Comptroller

November 4, 2013

Sam Walsh, Chief Executive  
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Dear Mr. Walsh:

As the California State Controller and the New York City Comptroller, we wish to express concern about Rio Tinto's investment in Pebble Mine ("Pebble Project") – a massive gold and copper mine proposed to be sited at the remote and ecologically sensitive headwaters of Bristol Bay, Alaska. We believe our concerns take on new urgency in the wake of the September 2013 decision by Anglo American, a 50 percent partner in the Pebble Project, to withdraw and incur losses despite investing more than \$540 million to date.

The California State Controller is a trustee of two large public pension plans (CalPERS and CalSTRS) with assets totaling \$430 billion. The New York City Comptroller is the investment adviser to, and a trustee of, the five New York City pension funds, which have combined assets totaling \$139 billion. This letter expresses our personal views as fiduciaries of pension funds that are substantial, long-term Rio Tinto shareowners.

The California and New York City pension funds believe that sustainable business practices – particularly responsible environmental, labor and human rights and practices – are fundamental to protecting and creating long-term shareowner value. As fiduciaries of these funds, we cannot ignore the far-reaching economic implications of investments that create sustainability risks – investments like the Pebble Project. In our view, investment in the Pebble Project presents undue risk not only to the long-term sustainability of the Bristol Bay region, but also to the long-term value of our investments in Rio Tinto.

Northern Dynasty Minerals, now sole owner of the Pebble Project and of which Rio Tinto owns 19%, has already warned investors that “[e]nvironmental concerns in general continue to be a significant challenge for Northern Dynasty . . . . Unexpected environmental damage from spills, accidents and severe acts of nature such as earthquakes are risks which may not be fully insurable and if catastrophic could mean the total loss of shareholders’ equity.”<sup>i</sup> The company even acknowledged that “[i]t is possible that the costs and delays associated with compliance with such standards and regulations could become such that we would not proceed with the development or operation.”<sup>ii</sup> Nonetheless, it has pledged to move forward to develop Pebble Mine in the wake of Anglo American’s departure.

In short, Pebble Mine will have significant environmental and social impacts that pose regulatory, operational, legal, and reputational risks for any company that pursues the endeavor.

- 1. Environmental Risks:** If fully developed, the Pebble Project would be one of the largest mines in North America, producing up to 10 billion tons of mining waste that would have to be stored – forever – in the rivers, streams and wild lands of Bristol Bay’s high-quality salmon habitat. Salmon are the economic backbone of the region and contribute as well to the regional community’s cultural foundation. An economic report recently released by researchers at the University of Alaska found that the Bristol Bay commercial salmon fishery is worth \$1.5 billion annually, making it the most valuable wild salmon fishery in the world.<sup>iii</sup> Not only do salmon sustain a prized commercial fishery, they also sustain world-class sports fishing, a subsistence-based economy for Native Alaskans, and 14,000 jobs.<sup>iv</sup> Mining the Pebble Project would put salmon – which are highly sensitive to even the slightest increases in copper – at great risk.
- 2. Regulatory Risks:** The U.S. Environmental Protection Agency (“EPA”) has the unequivocal right under Section 404(c) of the Clean Water Act to stop dredge and fill projects “whenever” failure to do so would result in unacceptable adverse environmental effects.<sup>v</sup> Nine federally-recognized tribes in Alaska have petitioned EPA to use its authority under Section 404(c) to protect Bristol Bay from large-scale mining like the Pebble Mine. EPA received similar requests from the Bristol Bay Native Corporation (a multi-billion dollar developer and the largest land-owner in the Bristol Bay region representing 9,000 native shareholders), the Bristol Bay Native Association (a non-profit corporation and tribal consortium serving the 31 federally recognized tribes in the Bristol Bay region), commercial fishing and sportsmen groups, chefs, jewelers, investors, churches, business owners, and environmental and conservation groups. In response, EPA conducted a scientific assessment of the Bristol Bay watershed to understand impacts from large-scale development. EPA recently released its second Draft Bristol Bay Watershed Assessment (“Watershed Assessment” or “Assessment”)<sup>vi</sup> – already subject to extensive public comment and expert peer review – which concluded that Pebble Mine would have adverse impacts, threatening wild salmon – and the economies and jobs that depend on them. EPA underscored that even with no human or system failure (impossible in the long-term), a mine of any foreseeable size would reduce water flow in the region, directly eliminate up to 4,800 acres of wetlands, dewater up to 90 miles of streams, and cause “toxic levels of

copper” in the streams around the mine. With inevitable operational failures, EPA found these risks would increase significantly, even catastrophically.<sup>vii</sup>

Given these findings, expending corporate funds to advance the Pebble Project is unduly risky. EPA’s findings create clear agency authority to prevent the “unacceptable adverse impacts” that large-scale mining would cause in the area. Even if the agency does not proceed to a 404(c) determination *now*, and the requisite permits are granted, an even greater risk will continue to loom over the project. The D.C. Court of Appeals recently held that EPA may “prohibit/deny/restrict/withdraw a specification *at any time*”<sup>viii</sup> – before, during, *or after* the permitting process. A mining permit could easily be withdrawn, therefore, even after significant funds (beyond the more than \$600 million already invested) have been expended for research, development, and construction.

3. **Operational Risks:** To transport gold and copper from the mine site to market, the Pebble Partnership will have to construct massive infrastructure, including a marine terminal in Cook Inlet, roads, and pipelines. In order to construct the 104-mile road, the Pebble Partnership must acquire access rights from area landowners. But numerous native corporations, tribes and other residents currently oppose the mine and will not willingly provide access rights.
4. **Legal Risks:** A coalition of local communities, tribal governments, the commercial and sport fishing industries, conservation groups, sports groups, and numerous business interests has formed to oppose the mine. Stakeholders have filed challenges against the exploration permit, land use plan, and water rights for the project. Further lawsuits are likely inevitable.
5. **Reputational Risks:** Any association with Pebble Mine could result in substantial adverse public relations and potential customer and investor backlash, as happened with mountaintop removal mining.<sup>ix</sup> Prominent jewelers like Tiffany & Co., Helzberg Diamonds, Zale and Jostens have expressed their opposition to Pebble Mine and vowed not to use gold extracted from it.<sup>x</sup> There is also overwhelming local opposition to the Pebble Project by Yup’ik, Athabaskan, Aleut and other Alaska Natives. The Bristol Bay Native Corporation voted in December 2009 to oppose the Pebble Project.<sup>xi</sup> The Alaska Inter Tribal Council, a consortium of 231 federally-recognized tribes in Alaska, passed a resolution against Pebble Mine in 2005.<sup>xii</sup> A survey released in November 2011 by the Bristol Bay Native Corporation found that 81% of its native shareholders strongly oppose the mine.<sup>xiii</sup> And most recently, after EPA released its second draft Watershed Assessment, it received more than 800,000 public comment letters, of which more than 73% of Americans, 84% of Alaskans and 98% of people from Bristol Bay expressed support for the Assessment and/or EPA action to *prevent* mining in Bristol Bay.

In light of these risks, it is not surprising that Anglo American recently withdrew from the Pebble Project. In his September 16, 2013, statement on the company’s decision, Anglo American CEO Mark Cutifani cited the company’s need “to prioritize capital to projects with the highest value and lowest risks within our portfolio.”

As fiduciaries of substantial, long-term Rio Tinto shareowners, we request that you perform and disclose a comprehensive assessment of the legal and regulatory risks of this uncertain investment. As part of this assessment, we would like to understand further the potential liabilities to the company in case of a failure or breach of the project which could affect salmon habitat and thus the economic well-being of the area's community. We further expect a corporate commitment that this development will not proceed in the absence of full social, regulatory and legal licensing.

We thank you for your prompt response.

Sincerely,



JOHN CHIANG  
California State Controller



JOHN LIU  
New York City Comptroller

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<sup>i</sup> Northern Dynasty, Form 20-F, Securities and Exchange Commission, CIK Number 0001164771, for the fiscal year ended December 31, 2004, at 11.

<sup>ii</sup> NDM, Management's Discussion and Analysis, Six Months Ended June 30, 2010, at 30.

<sup>iii</sup> Gunnar Knapp et al., Univ. of Alaska Anchorage Inst. of Soc. & Econ. Research, *The Economic Importance of the Bristol Bay Salmon Industry* (Apr. 2013), available at <http://fishermenforbristolbay.org/wp-content/uploads/2013/02/CFBB-ISER-FINAL-REPORT-5-10-2013.pdf>.

<sup>iv</sup> EPA, An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska (Second External Review Draft) 910-R-12-004BA-C (2013), available at <http://cfpub.epa.gov/ncea/bristolbay/recordisplay.cfm?deid=242810>.

<sup>v</sup> 33 U.S.C. § 1344(c).

<sup>vi</sup> EPA, An Assessment of Potential Mining Impacts on Salmon Ecosystems of Bristol Bay, Alaska (Second External Review Draft) 910-R-12-004BA-C (2013), available at <http://cfpub.epa.gov/ncea/bristolbay/recordisplay.cfm?deid=242810>.

<sup>vii</sup> *Id.* Additional regulatory risks must also be considered. In October 2011, voters in the Lake and Peninsula Borough in Bristol Bay passed the Save our Salmon ("SOS") initiative. The initiative bans large-scale mining that would "destroy or degrade" salmon habitat and is in direct response to Pebble Mine. The State of Alaska and Pebble Partnership are challenging the initiative in Alaska state court.

<sup>viii</sup> Mingo Logan Coal Co. v. EPA, 714 F.3d 608, 613-14 (D.C. Cir. 2013)(italics added).

<sup>ix</sup> E.g., Tom Zeller, Jr., *Banks Grow Wary of Environmental Risks*, NY Times, Aug. 30, 2010.

<sup>x</sup> Margot Roosevelt, *Retailers to Hold Mine to Higher Gold Standards*, LA Times, February 12, 2008.

<sup>xi</sup> Press Release, BBNC, BBNC Board of Directors Passes Resolution to Protect Bristol Bay Resources by Opposing the Pebble Mine Project (Dec. 29, 2009), available at [www.bbnc.net/index.php?option=com\\_content&view=article&id=103:bbnc-board-of-directors-passes-resolution-to-protect-bristol-bay-resources-by-opposing-the-pebble-mine-project&catid=36:news-a-events&Itemid=44](http://www.bbnc.net/index.php?option=com_content&view=article&id=103:bbnc-board-of-directors-passes-resolution-to-protect-bristol-bay-resources-by-opposing-the-pebble-mine-project&catid=36:news-a-events&Itemid=44).

<sup>xii</sup> Alaska Inter-Tribal Council, Resolution 2005-05, December 7, 2005, available at <http://aitc.org/?q=node/21>.

<sup>xiii</sup> BBNC, Pebble Mine Survey Results Newsletter, November 2011, available at [http://www.bbnc.net/images/stories/bbnc\\_pebble\\_results.pdf](http://www.bbnc.net/images/stories/bbnc_pebble_results.pdf).